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Chapter 11

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6 *Acres LLC*

7 UNITED STATES BANKRUPTCY COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9
10 In re

CHAPTER 11

11 HOODSTOCK RANCH, LLC,

Case No. 22-00797-WLH1

12 Debtor.

13 OBJECTION OF DR. GENE SCHEEL
14 TO CONFIRMATION OF DEBTOR'S
15 CHAPTER 12 PLAN OF
16 REORGANIZATION DATED
DECEMBER 23, 2022

17
18 **OBJECTION**

19 Dr. Gene Scheel and Tooth Acres LLC (collectively, "Dr. Scheel"), hereby files
20 this objection (the "Objection") to debtor Hoodstock Ranch, LLC's (the "Debtor")
21 Chapter 12 Plan of Reorganization dated December 23, 2022 [Docket No. 19] (the
22 "Plan"). In support of this Objection, Dr. Scheel represents as follows:

23 **POINTS AND AUTHORITIES**

24 For the Plan to be confirmed, it must satisfy each of the requirements of 11
25 U.S.C. § 1225(a). As demonstrated more fully below, the Plan fails to satisfy
26 Bankruptcy Code § 1225(a)(1), (3) or (6) and therefore confirmation must be denied.

OBJECTION OF DR. GENE SCHEEL TO
CONFIRMATION OF DEBTOR'S CHAPTER 12
PLAN OF REORGANIZATION DATED
DECEMBER 23, 2022 - PAGE 1

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1
2 **I. The Plan does not Satisfy § 1225(a)(1) because the Debtor does not Qualify**
3 **as a Chapter 12 Debtor**

4 As an initial matter, the Plan cannot be confirmed under Bankruptcy Code
5 § 1225(a)(1) because the Debtor is not eligible for Chapter 12 relief. Bankruptcy Code
6 § 1225(a)(1) provides that “the court shall confirm a plan if . . . the plan complies with
7 the provisions of this chapter and with the other applicable provisions of this title.” In
8 turn, Bankruptcy Code § 109(f) provides that “[o]nly a family farmer with regular
9 annual income may be a debtor under chapter 12 of this title.” The Bankruptcy Code
10 defines “family farmer” as:

11 a corporation or partnership in which more than 50 percent of the
12 outstanding stock or equity is held by one family, or by one family and
13 the relatives of the members of such family, and such family or
such relatives conduct the *farming operation*, and

14 ...

15 (i) more than 80 percent of the value of its assets consists of assets
related to the *farming operation*;

16 ...

17 (ii) its aggregate debts do not exceed \$10,000,000 and not less than 50
18 percent of its aggregate noncontingent, liquidated debts (excluding a
19 debt for one dwelling which is owned by such corporation or
20 partnership and which a shareholder or partner maintains as a principal
21 residence, unless such debt arises out of a farming operation), on the
date the case is filed, arise out of the *farming operation* owned or
operated by such corporation or such partnership.

22 11 U.S.C. § 101(18)(B) (emphasis added).

23 The term “farming operation” is defined to include “farming, tillage of the soil,
24 dairy farming, ranching, production or raising of crops, poultry, or livestock, and
25 production of poultry or livestock products in an unmanufactured state.” *See id.* at
26 § 101(20). While courts have held that the term “farming operation” must be given a

1 broad interpretation, they have also noted that the term is not to be construed so broadly
2 “so as to eliminate the definition altogether by bringing in operations clearly outside
3 the nature or practices one normally associates with farming.” *See In re Cooper*, 2011
4 WL 3882278, at *2 (Bankr. D. Or. 2011). Courts consider the following factors when
5 determining whether a debtor is engaged in a “farming operation”:

- 6 • Whether the location of the operation would be considered a traditional
7 farm;
- 8 • The nature of the enterprise at the location;
- 9 • The type of product and its eventual market;
- 10 • The physical presence or absence of family members on the farm;
- 11 • Ownership of traditional farm assets;
- 12 • Whether the debtor is involved in the process of growing or developing
13 crops or livestock; and
- 14 • Whether or not the practice or operation is subject to the inherent risks of
15 farming.

16 *See In re Sugar Pine Ranch*, 100 B.R. 28, 31 (Bankr. D. Or. 1989). Based on an
17 examination of these factors, it is clear that the Debtor is not engaged in a “farming
18 operation” and therefore does not qualify for Chapter 12 relief.

19 As an initial matter, the nature of the Debtor’s enterprise cannot be considered
20 a “farming operation” because the Debtor’s Plan itself provides that the Debtor does
21 not generate income through farming purposes. In particular, the budget attached to
22 the Plan as Exhibit 1 does not project *any* income to be derived from farming activities.
23 *See Plan, Ex. 1*. Instead, the Plan’s budget relies nearly entirely on “Event Rental and
24 Related Income.” *Id.* Accordingly, it is difficult to ascertain how the Debtor’s
25 enterprise can constitute a “farming operation.”

26 For similar reasons, the Debtor’s “type of product” and lack of involvement in

1 “growing or developing crops or livestock” weighs against finding that the Debtor is
2 engaged in a “farming operation.” While the Debtor’s schedules list “Timber” and
3 “10 Cord Split Wood” as crops belonging to the Debtor, the Plan’s budget makes clear
4 that it is not actively growing or developing these “crops” or that the Debtor has any
5 plans to do so in the future. *See* Docket No. 12 (the “Schedules”); Plan, at Ex. 1.
6 Accordingly, the mere existence of timber on the Debtor’s property, without more,
7 cannot support the conclusion that the Debtor is engaged in a “farming operation.” *See*
8 *In re Jayo*, 2006 WL 2433451, at *11 (Bankr. D. Idaho July 28, 2006) (finding that
9 debtor’s salvage logging was not a “farming operation” because the trees located on
10 debtor’s property “were never planted or raised as a crop or on a sustained yield
11 basis”); *In re Cooper*, 2011 WL 3882278, at *2 (Bankr. D. Or. 2011) (finding that
12 debtor was not eligible for Chapter 12 relief where the debtor did not cultivate trees
13 but instead simply marketed them).

14 Further, the Schedules do not list any “traditional farm assets.”¹ Indeed, one
15 would expect a debtor engaged in the harvesting and sale of timber to list timber-
16 related equipment such as chainsaws, skidders, or feller bunchers in its schedule of
17 assets. However, none of this equipment or anything of this kind is listed in the
18 Schedules. *See generally*, Schedules.

19 In addition, Mr. and Mrs. Heron (the 100% equity owners of the Debtor) do not
20 appear to live on the Debtor’s property. Indeed, the Herons’ individual Chapter 13
21

22 ¹ As explained more fully below, the personal property listed in the Debtor’s schedules
23 or the Liquidation Analysis attached as Exhibit 3 to the Plan actually belongs to Dr.
24 Scheel.

1 Plan indicates that their personal residence is located in Hood River, Oregon. *See*
2 Docket No. 23, Case No. 22-31614-pcm13 (Bankr. D. Or. Oct. 17, 2022).

3 Finally, the Debtor's operations are not subject to the inherent risks of farming.
4 The Debtor's proposed business is to provide event planning services, not to cultivate
5 or develop products that are subject to the risks inherent in farming such as weather,
6 crop production, and pricing. *See In re Jones*, 2011 WL 3320504, at *3 (Bankr. D. Or.
7 Aug. 2, 2011) (finding debtor was not exposed to inherent risks of farming where
8 debtor merely provided services to third parties and did not produce product).

9 In sum, an examination of the *Sugar Pine* factors establish that the Debtor is not
10 engaged in "farming operations" and therefore does not qualify for Chapter 12 relief.
11 As such, the Debtor's Plan seeking Chapter 12 relief does not comply with the
12 provisions of the Bankruptcy Code and must be denied under Bankruptcy Code
13 § 1225(a)(1).

14 **II. The Plan does not Satisfy § 1225(a)(3) because the Plan was not Filed in**
15 **Good Faith**

16 Next, the Plan cannot be confirmed under Bankruptcy Code § 1225(a)(3)
17 because the Plan misrepresents the Debtor's ownership status of certain property and
18 unfairly manipulates the Bankruptcy Code. Bankruptcy Code § 1225(a)(3) provides
19 that "the court shall confirm a plan if . . . the plan has been proposed in good faith and
20 not by any means forbidden by law." "Whether a plan is proposed in good faith turns
21 on an examination of the totality of the circumstances surrounding the plan and the
22 bankruptcy filing." *In re Barger*, 233 B.R. 80, 83 (8th Cir. BAP 1999). Indeed, "[t]he
23 court must focus on factors such as . . . whether the debtor has made any fraudulent
24 misrepresentation to mislead the bankruptcy court; or whether the debtor has unfairly
25 manipulated the Bankruptcy Code." *Id.*

26 Here, the Plan reserves the right to sell the Debtor's assets to fund Plan payments
and provides that any such sale "shall be deemed a sale pursuant to a confirmed plan

1 of reorganization pursuant to the Bankruptcy Code.” *See* Plan, at Art. 3.08. However,
2 Debtor’s Schedules and the Liquidation Analysis attached as Exhibit 3 to the Plan both
3 list assets that are actually owned by Dr. Scheel. *See generally*, Schedules; Plan, at
4 Ex. 3. Accordingly, the Debtor has fraudulently misrepresented the ownership status
5 of this property in an attempt to unfairly manipulate the Bankruptcy Code’s post-
6 confirmation sale provisions. This alone should preclude confirmation of the Plan
7 under Bankruptcy Code § 1225(a)(3).

8 **III. The Plan does not Satisfy § 1225(a)(6) because the Debtor’s Proposed**
9 **Means of Funding Plan Payments is not Feasible**

10 Finally, the Plan is not feasible because the Debtor’s proposed use of its Property
11 to fund Plan payments violates applicable zoning laws and the Debtor has not
12 otherwise demonstrated that it has received approval for such use. Specifically, the
13 Debtor’s Property is zoned as a Forest Resource District. *See* Klickitat County Ord.
14 19.12. The purpose of the Forest Resource Zoning is to “provide a stable commercial
15 forest and wild land base and to encourage good multiple use forest management in its
16 broadest definition.” *See id.* at 19.12.010. Permitted uses under this zoning category
17 “include but are not limited to grazing, mining, water management, fish and wildlife
18 management, recreation and sports, and management of crops of various kinds.” *See*
19 *id.* at 19.12.020A. However, “the board of adjustment may permit as conditional uses
20 any other uses it judges to be no more detrimental to the adjacent properties than, and
21 of the same type and character as, those uses permitted outright.” *See id.* at 19.12.030.

22 Here, the Debtor proposes to fund Plan payments through “rent portions of the
23 Property for events” and estimates that it will receive \$250,000 in income from such
24 events. *See* Plan, at Art. 3.06, Ex. 1. However, event planning and operations do not
25 fall under the permitted uses for a Forest Resource District. *See* Klickitat County Ord.
26 19.12.020A. In addition, the Debtor has not established that it has received a
Conditional Use Permit from the Klickitat County Planning Department. *See id.* at

1 19.12.030. Accordingly, the Plan's proposed means to pay creditors is simply not
2 feasible.

3 The Plan is also not feasible because the Debtor has not demonstrated that it has
4 any experience in event planning and event operations or otherwise substantiated its
5 income projections of \$250,000 per year from such activities. Indeed, the Plan merely
6 provides that "[t]he Debtor's income projections are based upon Debtor's estimates of
7 rental demand after scheduling event rentals for the 2023 year." However, it is difficult
8 to comprehend how the Debtor could be scheduling events without the proper authority
9 to do so. Moreover, the Debtor does not explain what kind of event rentals it is
10 currently scheduling or plans to engage in. Finally, the Property is located in an
11 isolated portion of Klickitat County that is incredibly difficult to access throughout
12 most of the year. Accordingly, it is highly questionable that the Debtor will earn
13 \$250,000 per year under these circumstances. Therefore, the Plan is not feasible and
14 confirmation should be denied.

15 **CONCLUSION**

16 For the reasons set forth herein, Dr. Scheel respectfully requests that this court
17 deny confirmation of the Plan.

18 Dated this 23rd day of February, 2023.

19 SUSSMAN SHANK LLP

20 /s/ Thomas W. Stilley
21 By _____
22 Thomas W. Stilley, WSB #21718
23 Garrett S. Eggen, Admitted Pro Hac Vice
24 Attorneys for Gene Scheel and Tooth Acres, LLC
25
26

1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the County of Multnomah, state of Oregon; I am over the age of eighteen
4 years and am not a party to this action; my business address is 1000 S.W. Broadway, Suite 1400,
5 Portland, Oregon 97205-3089, in said county and state.

6 I certify that on February 23, 2023, I served the **OBJECTION OF DR. GENE SCHEEL**
7 **TO CONFIRMATION OF DEBTOR'S CHAPTER 12 PLAN OF REORGANIZATION**
8 **DATED DECEMBER 23, 2022** on all ECF participants as indicated on the Court's Cm/ECF
9 system.

10 I swear under penalty of perjury that the foregoing is true and correct to the best of my
11 knowledge, information, and belief.

12 Dated: February 23, 2023.

13
14 */s/ Janine E. Hume*

15 _____
Janine E. Hume, Legal Assistant

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